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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Charles M. Kail and
Cheryl L. Kail,
Debtors.**

**Chapter 13 Case
09-10796**



**Charles M. Kail and
Cheryl L. Kail,**

Plaintiffs,

v.

**United States of America and
Vermont Federal Credit Union,
Defendants.**

**Adversary Proceeding
09-1037**

Appearances: **Nancy M. Geise, Esq.
Kolvoord Overton & Wilson
Essex Junction, VT
For the Debtors**

**Karen E. Wozniak, Esq.
United States Department of Justice
Washington, DC
For the United States of America**

**Alexandra E. Edelman, Esq.
Kevin M. Henry, Esq.
Gary F. Karnedy, Esq.
Douglas J. Wolinsky, Esq.
Primmer Piper Eggleston & Cramer
Burlington, VT
For Vermont Federal Credit Union**

**ORDER
DENYING MOTIONS FOR SUMMARY JUDGMENT**

For the reasons set forth in the memorandum of decision of even date, IT IS HEREBY ORDERED that the three summary judgment motions pending in this proceeding are DENIED as follows:

1. The motion for summary judgment filed by the Internal Revenue Service on January 7, 2011 (doc. # 39), seeking a determination on the issue of whether Debtor Charles M. Kail is a responsible party liable for taxes under 26 U.S.C. § 6672, is denied because there are material facts in dispute and certain material facts necessary for an adjudication of the issue are absent from the record.
2. The motion for summary judgment filed by the Debtors on January 7, 2011 (doc. # 38), seeking a determination on the issue of whether Debtor Charles M. Kail is a responsible party liable for tax-

es under 26 U.S.C. § 6672, is denied because there are material facts in dispute and certain material facts necessary for an adjudication of the issue are absent from the record.

3. The portion of the motion for summary judgment filed by VFCU on January 7, 2011 (doc. # 37), seeking a determination on the issue of whether Debtor Charles M. Kail is a responsible party liable for taxes under 26 U.S.C. § 6672, is denied because VFCU lacks standing to contest the validity of the tax assessment.
4. The portion of the motion for summary judgment filed by VFCU on January 7, 2011 (doc. # 37), seeking a determination that the VFCU Mortgage has priority over the IRS's First Federal Tax Lien, is denied on the merits because VFCU is not entitled to relief under the doctrine of equitable subrogation as a matter of law.

IT IS FURTHER ORDERED that the parties shall promptly contact the Courtroom Deputy to set a trial date, and by August 5, 2011 shall file a proposed joint final scheduling order that includes the date of trial, the due date for the filing of a final joint pre-trial statement (which shall be due no later than one week before the trial date), and any other deadlines the parties deem necessary to expeditiously litigate the remaining issues in this proceeding.

SO ORDERED.

July 22, 2011
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge